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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/654,320	09/01/2000	Jaideep Srivastava	P3944	5747

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CENTRAL COAST PATENT AGENCY  
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EXAMINER
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LEZAK, ARRIENNE M

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/654,320

Applicant(s)

SRIVASTAVA ET AL.

Examiner

Arrienne M. Lezak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 24 February 2005 has been entered. Examiner notes that no claims have been amended, cancelled or added. Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 28 December 2004 as reiterated herein below.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,935,207 to Logue in view of US Patent 5,796,952 to Davis.

4. Regarding Claims 1 & 13, Logue discloses a data-collection system for collecting data about a user through monitoring user interaction on a data-packet-network comprising: a proxy server connected to the data-packet-network for providing user

access to the proxy services and for monitoring user access and interaction with those services; parsing applicable data resulting from the user activity and transactions; a dedicated server interface connected to the data-packet-network for providing user access to the proxy services; and a software application running on the proxy server for collecting and storing data obtained as a result of active user-interaction with the proxy services in a secure and organized fashion; and incorporating the recorded data for the purpose of creating a multifaceted user profile, (Abstract; Col. 2, lines 19-46; Col. 5, lines 10-30; Col. 11, lines 35-67; and Col. 12, lines 1-40).

5. Logue does not specifically disclose the continued monitoring of post-access online user activity and transactions, (as required by Newly Amended pending Claims 1 & 13).

6. Davis discloses a method and apparatus for tracking client interaction with a network resource and creating client profiles and resource database, (Title & Abstract). It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to incorporate the monitoring technique of Davis into the Logue method. The motivation to combine is found within Logue's use of a "site tracking list" which organizes data so as to provide hit tracking information to remote site administrators, (Col. 5, lines 10-30). As Logue already teaches the monitoring and storage of some user interaction for purposes of generating reports of the same, it would have been obvious to monitor and store all user interaction for purposes of generating various other types of reports. Thus, Claims 1 & 13 are unpatentable over the combined teachings of Logue in view of Davis.

7. Regarding all dependant claims, Examiner notes that the teachings of Logue in view of Davis relative to Claims 1 & 13 are assumed incorporated therein.
8. Regarding Claims 2 and 14, Logue discloses a data-collection system wherein the data-packet-network is the Internet network, (Col. 2, lines 19-46; Col. 3, lines 66-67; and Col. 4, lines 1-2).
9. Regarding Claim 3, Logue discloses a data-collection system wherein the proxy server and a dedicated server interface are maintained by a same service-providing entity, (Col. 4, lines 2-19 and Col. 6, lines 42-59).
10. Regarding Claim 4, Logue discloses a data-collection network wherein the dedicated server interface is dedicated to providing cobrand services to users of a cobrand partner, (Fig. 5A and 5B; Col. 6, lines 62-67; and Col. 7, lines 1-43).
11. Regarding Claim 5, Logue discloses a data-collection system wherein the proxy services include a data-collection, aggregation and summary service, (Abstract; Col. 5, lines 10-30; Col. 9, lines 20-67; Col. 10, lines 1-67; and Col. 11, lines 1-34).
12. Regarding Claim 6, Logue discloses a data-collection system wherein there are a plurality of dedicated server interfaces, individual ones of such interfaces dedicated to individual ones of a plurality of participating cobrand partners, (Col. 2, lines 19-46 and Col. 4, lines 14-19).
13. Regarding Claim 7, Logue discloses a data-collection system wherein the software application collects demographic data, account-information data, and on-line behavior data, (Abstract; Col. 3, lines 38-44; and Col. 5, lines 13-30).

14. Regarding Claim 8, Logue discloses a data-collection system wherein the collected data about a user is used to construct a multifaceted user profile, (Abstract; Col. 3, lines 38-44; and Col. 5, lines 13-30).

15. Regarding Claim 9, Logue discloses a data-collection system wherein the data-collection is performed in an entirely automated fashion, (Col. 8, lines 45-67; Col. 9, lines 1-18; and Col. 12, lines 1-4)..

16. Regarding Claim 10, Logue discloses a data-collection system wherein additional data obtained through non-automated method is added to the data collected automatically in order to increase the scope of a multifaceted user profile, (Col. 5, lines 10-30).

17. Regarding Claim 11, Logue discloses a data-collection system wherein assembly of the multifaceted user profile is automated, (Col. 8, lines 45-67; Col. 9, lines 1-18; and Col. 12, lines 1-4).

18. Regarding Claim 12, Logue discloses a data-collection system wherein the assembled multifaceted user profile is periodically updated in an automated fashion, (Col. 8, lines 45-67; Col. 9, lines 1-18; and Col. 12, lines 1-4).

19. Regarding Claims 15 and 16, Logue discloses a data-collection method wherein the monitoring step includes the monitoring of transactions including purchases, site registrations, and orders for summary data, (Claim 15); and the user activity includes activity at an interfacing server, (Claim 16), (Col. 2, lines 19-46; Col. 5, lines 10-67; and Col. 6, lines 1-59).

20. Regarding Claims 17 and 18, Logue discloses a data-collection method wherein the recording of applicable data is done to a data repository external (Claim 17), or internal (Claim 18), to the server recording the data, (Col. 4, lines 14-19, 53-57 and Col. 6, lines 42-46).

21. Thus, Claims 2-12 and 14-18 are unpatentable over the combined the combined teachings of Logue in view of Davis.

### ***Response to Arguments***

22. Applicant's arguments filed 24 February 2005 have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the Amendment avoids such references or objections.

23. In response to Applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to applicant's argument attacking the combination of references, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the

test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Specifically, Examiner notes that Logue in view of Davis discloses monitoring post-access user activity, (Davis), via a proxy server, (Logue), as noted herein above.

24. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Examiner reiterates the motivation to combine the references noted herein above.

25. Regarding Applicant's argument that Logue fails to monitor user access, Examiner finds this to be incorrect noting Logue's teaching of a proxy server, wherein user access is monitored generally for statistical data, (Col. 5, lines 10-30), or specifically in order to determine which websites to store, (Col. 1, lines 30-36). Applicant argues that only "serviced requests are recorded in Logue, not user access as claimed," and Examiner respectfully disagrees noting Applicant's claim language which requires "a proxy server connected to the data-packet-network for providing proxy services and for actively monitoring user access and post-access online user activity and transactions associated with the proxy services." Specifically, Examiner finds Logue



teaches monitoring of serviced requests by a proxy server associated with frequently accessed websites, (as admitted by Applicant), which requests clearly and obviously read upon the claim language as noted herein. Additionally, Examiner emphasizes that the Logue proxy server does indeed monitor user activity, which proxy server would obviously utilize software for the same. Further, Davis clearly teaches a software product for both access and post-access monitoring of user activity, which software could clearly and obviously be embedded within the Logue proxy server. Thus, Examiner finds that the combined teachings of both Logue and Davis clearly and obviously render Applicant's invention, as claimed, unpatentable.

26. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Examiner finds Applicant's sole argument that Logue does not suggest software at the proxy for monitoring user activity to be unconvincing, as noted herein above.

27. Thus, as Examiner has completely addressed Applicant's request for reconsideration and continued examination, and finding Applicant's arguments do not show how the reconsideration and continued examination avoids the Examiner's

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references or objections, Examiner hereby maintains the rejection of all claims in their entirety.

28. Examiner finds that this 2nd RCE fails to introduce new or amended claim language or new arguments. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

29. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
Examiner  
Art Unit 2143

AML



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